(2015) 01 KAR CK 0039

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 503/2010 and 5182/2009 (MV)

Doddammaiah and Others APPELLANT

Vs

Wajid and Others RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0039

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Suguna R. Reddy, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

B. Veerappa, J.—The above two appeals are filed against the judgment and award dated 28th March, 2009 passed in MVC No. 1549/2002 by the I Additional Civil Judge (Sr. Dn.) and Additional MACT., Kolar. Hence, they are taken up together and disposed of by this common judgment.

2. MFA No. 503/2010 is filed by the claimant seeking enhancement of the compensation awarded by the Tribunal and MFA No. 5182/2009 is filed by the insurance company for setting aside the judgment and award passed by the Tribunal only on the ground that as on the date of accident, the policy certificate - Ex. P. 4 did not cover the insurance.

3. The brief facts of the cases are:

"That on 16.5.2002 at about 6.30 p.m., when the claimant boarded the autorickshaw bearing registration No. CAA 136 belonging to the 1st respondent at Kolar to go to her village, near Shanthi Kalyana Mantap and Kondarajanahalli on N.H. 4 road, the driver of the auto drove the same in a rash and negligent manner in a high speed and dashed against the offending vehicle i.e., two wheeler resulting in accident and the claimant sustained grievous injuries and immediately she was shifted to hospital where she was treated as an inpatient from 16.5.2002 to 22.6.2002 and while discharging from the hospital, she was advised to go for follow up treatment. Further contended that she was doing coolie work and earning Rs. 100/- per day and due to permanent disability sustained by her, she was not able to do any avocation, etc. Therefore, she filed a claim petition before the Tribunal for a compensation of Rs. 5 lakhs."

4. It is not in dispute that inspite of service of notice, the 1st respondent did not appear before the Tribunal and therefore, he was placed ex-parte. Though respondent Nos. 2 and 3 appeared through their Counsel, have neither adduced any evidence nor have filed statement of objections rebutting the evidence adduced by the claimant.

5. Based on the pleadings, the Tribunal framed the following issues:

"1. Whether the petitioner proves that the alleged accident was caused due to rash and negligent driving of the driver of the auto and also rider of the alleged motorcycle and caused accident? And due to the said accident, she sustained injuries and she is entitle for compensation from the respondents?

2. What order or award?"

6. The claimant/appellant in order to prove her case has examined as P.W. 1 and doctor as P.W. 2 and marked the documents Exs. P.1 to 8. The respondents have not filed any objections, nor adduced any evidence.

7. After considering the entire material, the Tribunal has come to the conclusion that the alleged accident was caused due to rash and negligent driving of the driver of the auto which has resulted the claimant/appellant sustaining injuries as per Ex. P.2 - wound certificate. Further considering both oral evidence of P.Ws. 1 and 2 and material documents Exs. P.1 to 8, it has awarded a sum of Rs. 44,120/- with interest at 6% p.a. from the date of petition till realization of the compensation. Being aggrieved by the said judgment and award, the claimant has filed MFA No. 503/2010 for enhancement and 3rd respondent/insurance company has also filed MFA No. 5182/2009 contending that Ex. P.4 insurance policy did not cover the risk of the claimant as on the date of the accident.

JUDGMENT IN MFA No. 503/2009

8. I have heard the learned Counsel for the parties to the lis.

9. The learned Counsel for the appellant, Smt. Suguna R. Reddy contended that the compensation awarded by the Tribunal is on the lower side and the Tribunal has not taken into consideration the evidence of P.Ws. 1 and 2 and material documents, Exs. P.1 to 8 produced on record properly. Therefore, she urged for enhancement of compensation.

10. Per contra, the learned Counsel for the insurer, Sri O. Mahesh sought to justify the impugned order contending that the insurance company is not liable to pay any compensation as the insurance policy Ex. P.4 did not cover the insurance of the claimant as on the date of alleged accident in question. Hence, he prayed

for dismissal of MFA No. 503/2010 and allowing of MFA No. 5182/2009.

11. In view of the rival contentions urged by both the parties, the points that arise for consideration is:

"i) Whether the Tribunal was justified in awarding a sum of Rs. 44,120/- with interest at 6% p.a. from the date of petition till realization to the claimant in the facts and circumstances of the present case?

ii) Whether the insurance company is justified in filing an appeal MFA 5182/2009 on the alleged ground that the insurance policy was not in force as on the date of the accident?"

12. I have given my anxious consideration to the contentions urged by both the learned Counsel and perused the entire materials both oral and documentary evidence of P.Ws. 1 and 2 and Exs. P.1 to 8. It is not in dispute that the respondents have not filed any objections nor adduced any evidence contrary to the evidence and materials adduced by the claimant.

13. The claimant has examined herself as P.W. 1 has specifically stated on oath that, she was earning Rs. 100/- per day and due to the accident, she sustained grievous injuries and she has to suffer discomfort and unhappiness throughout her life which is supported by the documents Exs. P.1 to P.8. The wound certificate Ex. P.2 clearly depicts as follows:

"2" lacerated wound left leg lower 1/3 with BB# 1" longitudinal Haematoma over frontal region unable to lift the left leg.

X ray 18/5/02 4728 shows B.B.# left leg lower 1/3.

Grievous in nature"

P.W. 2 the doctor, who has treated the claimant has stated on oath with regard to the injuries as follows:

"1) Cut lacerated wound over lower medial aspect of the left leg;

2) Cut lacerated wound lateral aspect of middle 1/3rd of left leg;

3) Compound fracture Type II of left Tibia and Fibula;

4) Blunt injury to abdomen;

5) Contusion over the right shoulder."

and has also stated that the patient was discharged with plaster of parries on 22.6.2002 with an advise to undergo follow up treatment to do the following:

"i) continue plaster immobilization;

ii) Active exercise to toes."

P.W. 2 has also stated with regard to the disability to the left lower limb as 50%

and to the total body at 18%.

14. The insurance company has neither adduced any contra evidence nor has produced any documentary evidence contradicting the statements of P.Ws. 1 and 2. The material on record also discloses that the claimant has become crippled and she has to suffer discomfort, pain throughout her life and she will not be in a position to do work as she was doing before the accident. It is also to be noted that the Tribunal has failed to take notice that while awarding compensation it should be liberal in respect of personal injuries since it goes to living person and the award should be substantial to the gravity of injuries sustained and not mere token of damages as held by the Apex Court time and again. No amount could compensate the claimant who has to suffer throughout her life and the amount awarded must not be niggardly, since the law values life and limb in a free society in generous scales''. Therefore, the determination made by the Tribunal in awarding the compensation was grossly inadequate and the same requires further enhancement. Accordingly, point No. 1 is answered in negative. Hence towards loss of future earning capacity, the income of the claimant should be taken as Rs. 80/- instead of Rs. 60/- per day and accordingly, a sum of Rs. 77,760/- is awarded towards loss of future earning capacity.

15. In view of the reasons stated above and on re-appreciating the pleadings and evidence on record, it is just and reasonable to modify the impugned judgment and award passed by the Tribunal and hence, the same is modified by re-assessing the compensation under different heads as follows:

16. Accordingly, the appeal filed by the claimant is allowed in part and the impugned judgment and award passed by the Tribunal is modified awarding a total compensation of Rs. 92,760/- which is rounded of to Rs. 93,000/- with interest at 6% p.a. from the date of petition till the date of realization and the 1st respondent/insurance company shall deposit the same before the MACT, Kolar within a period of 4 weeks from the date of receipt of a copy of this judgment and award.

Out of the compensation awarded a sum of Rs. 50,000/- with proportionate interest thereon shall be deposited in the name of the claimant/appellant in any nationalized bank for a period of 5 years and the claimant is at liberty to withdraw the periodical interest as and when it accrues. The remaining amount with proportionate interest shall be disbursed to the claimant on proper identification immediately on deposit of compensation amount by the insurance company.

JUDGMENT IN MFA No. 5182/2009

17. The above appeal is filed by the insurance company.

18. It is not in dispute that the accident took place on 16.5.2002 as stated by P.W. 1/the claimant during the course of her cross-examination and the same has been supported by the averments made in Column No. 8 of the claim petition

clearly discloses that the accident took place on 16.5.2002 at about 6.30 p.m. and Ex. P.4 the insurance policy which clearly depicts that the policy was renewed on 9.5.2002 with effect from 10.5.2002 to midnight of 9.5.2003. Therefore, as on the date of the accident, the policy-Ex. P.4 was in force and hence, the contention of the insurance company that the accident took place on 16.5.2004 and the policy was not in force as on the date of the accident is contrary to the material on record and the same cannot be accepted. Therefore, the appeal filed by the insurance company is misconceived and the same is liable to be dismissed since the only ground urged by the learned Counsel for the insurance company is that Ex. P.4 the insurance policy did not cover the accident in question. The material evidence produced by P.W. 1 and the original claim petition clearly depict that the accident took place on 16.5.2002 and as on the date of accident, the insurance policy was in force which clearly depicts from Ex. P.4 the insurance policy issued by the insurance company. Therefore, the appeal filed by the insurance company is liable to be dismissed and hence, point No. 2 is answered in negative.

19. Accordingly, the appeal filed by the insurance company is dismissed.

The deposit made by the insurance company at the time of admission of the appeal with interest accrued thereon shall be transmitted to the MACT., Kolar forthwith and the same may be adjusted towards the compensation awarded to the claimant.

Office is directed to draw the award in both the appeals accordingly.

